

GOOD MORNING SENATOR DESCHAMBEAULT,
REPRESENTATIVE WARREN
AND DISTINGUISHED MEMBERS OF THE COMMITTEE.

MY NAME IS MARK DION,
I AM A RESIDENT OF PORTLAND
I AM HERE TODAY
TO PROVIDE TESTIMONY IN FAVOR OF LD 1492.
MY OPINIONS AND OBSERVATIONS
ARE THE CONSEQUENCE
OF FORTY-THREE YEARS
IN THE CRIMINAL JUSTICE ARENA
AS A POLICE OFFICER,
SHERIFF
AND DEFENSE ATTORNEY.

LET ME BEGIN WITH THE OBSERVATION
THAT SOME HAVE CHARACTERIZED
THIS BILL
AS AN ILL-CONCEIVED OPPORTUNITY
TO “RELAX THE STANDARDS”
FOR THE FELONY PROSECUTION OF CERTAIN DRUG CRIMES.

THIS CRITIQUE SUGGESTS,
THAT BY RAISING
THE THRESHOLD AMOUNT OF DRUGS
NECESSARY TO SUSTAIN A CONVICTION

FOR FELONY FURNISHING OR TRAFFICKING,
WE WILL HAVE DIMINISHED
THE “TOOLS” AVAILABLE
TO PROSECUTORS
AS THEY MEET
THE CHALLENGE
TO PUBLIC SAFETY
POSED BY
THE ILLICIT SALE
OR TRANSFER
OF THESE DANGEROUS DRUGS.

I REJECT THAT PROPOSITION.

A HUMAN BEING
HIJACKED
AND MADE HOSTAGE TO OPIATES,
BY ANY DEFINITION,
CAN NO LONGER
RATIONALLY TEASE OUT
THE LEGAL SHIFTS
THAT ALLOCATE HER OR HIS
NEEDLE,
SPOON
AND QUARTER GRAM
INTO NEATLY BOXED CONSEQUENCES
OF MISDEMEANOR OR FELONY CONDUCT.

THOSE DISTINCTIONS
AND THE ABILITY TO MAKE THEM
WERE LOST
WITH THE FIRST PUSH
OF A HYPODERMIC PLUNGER.

CRIMINAL LAW
AS A DETERRENT
WORKS BEST
FOR REASONABLE PEOPLE
WHO CAN BALANCE
THE RISK AND REWARDS
OF THEIR DECISIONS
AND PLAN THEIR LIFE ACCORDINGLY.

HOWEVER THIS BILL ASKS
THIS COMMITTEE
TO GRAPPLE
WITH A MUCH HARDER FACT
THAT SUBSTANCE USE DISORDER
STANDS IN DEFIANCE
TO THE COST BENEFIT ANALYSIS
WE TYPICALLY ATTACH
TO SOMEONE
CONTEMPLATING CRIMINAL BEHAVIOR.

LD 1492 REQUIRES
THAT WE COME
TO SOME HUMBLE UNDERSTANDING
THAT OUR TRADITIONAL MODELS
OF CRIME AND PUNISHMENT
ARE FAR REMOVED,
EVEN ALIEN,
TO SOMEONE WAKING UP
TOMORROW MORNING
DOPE SICK.

LET ME NOW EXPLORE
THE LEGAL MATH
UNDERLYING DRUG THRESHOLDS
AS A PREDICATE
FOR CHARGING A DEFENDANT
WITH EITHER
A FELONY FURNISHING
OR TRAFFICKING CRIME.

THE LEGAL CALCULATION,
CALLED A PRESUMPTION BY LAWYERS,
GOES LIKE THIS:

DEFENDANT IS IN POSSESSION
OF A CERTAIN QUANTITY OF DRUGS,
WE WILL CALL THAT FACT "A"

PROSECUTOR PROVES,
WITH SUPPORTING EVIDENCE,
THAT FACT "A" IS INDEED TRUE
DEFENDANT IS IN POSSESSION OF AN ILLICIT DRUG

FACT "A", IS NOW
TRANSFORMED INTO EVIDENCE
A RESULT
THAT STANDING ALONE
ALSO PROVES THE EXISTENCE
OF A SECOND FACT
WE WILL CALL THIS FACT "B"

FACT "B" DECLARES
THE DEFENDANT
INTENDED TO SELL
OR FURNISH DRUGS

FACT "A",
UNDER THE LAW OF EVIDENCE,
IS SAID TO BE SUFFICIENT
TO PROVE FACT "B"

NO ADDITIONAL PHYSICAL
OR TESTIMONIAL EVIDENCE
IS REQUIRED
FOR THE PROSECUTOR
TO MAKE HER CASE.

THAT'S IT
YOU PROVE "A"
YOU AUTOMATICALLY GET "B"
AND DEFENDANT
BECOMES A FELON

PRESUMPTIONS,
INVOLVING THRESHOLD AMOUNTS
OF DRUGS ARE,
WITHOUT QUESTION,
AN IMPORTANT TOOL
FOR PROSECUTORS

YOU CAN SEE WHY
THEY WOULD SUPPORT
DRUG THRESHOLDS
THE MATH IS PREDICTABLE
AND THE LEGAL RESULTS
ARE DEADLY SIMPLE

THE LONG-TERM SOCIAL RESULTS
ARE UNFORTUNATELY,
EQUALLY EFFICIENT
AND DEADLY
TO THE DEFENDANT
TO THE FUTURE PROMISE
OF RECOVERY
TO SUCCESSFUL RE-ENTRY INTO THE COMMUNITY

WHILE THE RULE OF PRESUMPTIONS
BELONGS TO THE JUDICIARY
THE THRESHOLD QUESTION
BELONGS TO THE WISDOM
OF THIS COMMITTEE
AND THE LEGISLATURE AS A WHOLE.

LET ME BE CLEAR
I HAVE ARRESTED DRUG TRAFFICKERS
I HAVE SENT MY FAIR SHARE
OF THESE DEFENDANTS
TO PRISON

I HAVE NO QUARREL WITH THE IDEA
THAT WE MUST DO ALL WE CAN
TO STAMP OUT COMMERCIAL DRUG TRAFFICKING.

THE QUESTION IS
HOW DO WE DISTINGUISH
A FELONY FROM A MISDEMEANOR
WHEN ALL WE HAVE
FOR EVIDENCE
IS THE WEIGHT OF A DRUG
IN FRONT OF US TO CONSIDER.

THE EXTREMES
ARE EASY TO JUDGE
A TENTH OF A GRAM
VERSUS A KILO

BUT AS YOU GET CLOSER
TO THE LINE
BETWEEN THE TWO CATEGORIES
THE HARDER IT BECOMES
TO CREATE A BENCHMARK
THAT HONORS
THE PRINCIPLES OF
FUNDAMENTAL FAIRNESS

A FAIRNESS
THAT SHOULD GUIDE
OUR LAW ENFORCEMENT STRATEGIES
AND YOUR LAWMAKING EFFORTS

LET ME BE CANDID
MOST OF MY CLIENTS ARE
FACTUALLY GUILTY
THEY DO NOT CLAIM INNOCENCE
THEY KNOW
THEY HAVE DONE SOMETHING
WRONG

THEY HIRE A LAWYER
IF THEY CAN
OR HAVE ONE APPOINTED
WHEN THEY CAN'T
BUT THEIR CONCERN
IS NOT ABOUT GUILTY
OR NOT GUILTY

WHAT THEY WANT
FROM ME
AND YOU
IS BASIC FAIRNESS
AN IDEA THAT THEY CAN
AND WILL BE TREATED
FAIRLY.
THAT'S ALL THEY HOPE FOR REALLY
A CHANCE
FOR FAIRNESS
THAT'S IT.

DRUG THRESHOLDS
WELL INTENTIONED
DRAWN HIGH OR LOW
WITH NOTHING ELSE NEEDED
TO SUPPORT THE LEGAL CONCLUSIONS
THAT FLOW
FROM THEIR BRIGHT LINES
TAUNT THIS IDEA OF FAIRNESS

THRESHOLDS
ARE ABOUT SOMEONE'S LIFE
AND OUR SHARED SENSE OF FAIRNESS
THAT SHOULD BE A HALLMARK
OF OUR UNDERSTANDING
OF WHAT JUSTICE SHOULD BE

I WOULD ASK THIS COMMITTEE
TO ADOPT RAISING
THE THRESHOLD AMOUNTS OF DRUGS
NECESSARY TO SUSTAIN
A FELONY PROSECUTION
AS PROPOSED BY THE BILL'S SPONSOR.